United Nations AT/DEC/1145

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1145

Case No. 1242: TABARI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Kevin Haugh, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Jacqueline Scott;

Whereas, on 29 January 2002, Diab Khalil Tabari, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an Application containing pleas which read as follows:

"*Part II*

Pleas

1. Implement a *tentative* 25-20% salary increase until the pay policy and the salary survey issue is solved and until a new and clear one or more salary scales are established. ...

2. To establish a governing body for UNRWA from the donor countries to be funded by the donor countries themselves and to monitor and judge the acts of the Administration and the management of UNRWA.

3. To cancel the pay policy and salary surveys conducted by UNRWA and to follow the pay policy and salary surveys of [the United Nations Development Programme (UNDP)] with respect to local staff. ...

4. To restudy the whole Agency set up ... with the assistance of the Area Staff Union [(ASU)] ...

5. To establish transparent directives that are to be read in conformity with the rules and regulations. ...

6. To reach a Memorandum of Agreement that covers the above-mentioned points and to establish [a] Staff/Management consultation mechanism ...

7. To identify the actual percentage of increase and the time it was due from. Then to implement the actual increase and to pay lump sums from the retroactive payments due ...

8. A full scale investigation to be carried out on the Management of the Agency with the assistance of ASU ...

9. To pay [costs in the] amount of US$3,000 ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 July 2002 and periodically thereafter until 31 January 2003;

Whereas the Respondent filed his Answer on 30 January 2003;

Whereas the Applicant filed Written Observations on 30 September 2003;

Whereas the facts in the case are as follows:

The Appellant joined UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Administrative Assistant "B", at the Grade 10, step 1 level, at Lebanon Field Office, effective 1 June 1989. On 1 September 2000 the Applicant was promoted to the post of Administrative Officer, Grade 14, in the Department of Education at the Lebanon Field Office.

On 21 August 1990, the Administration issued Area Staff Pay Policy A/103.1(2)-C.

In September 1998, the Agency conducted a salary survey in Lebanon, and in December, the Agency investigated the conditions of service for the Agency's Area staff in Lebanon. As a result, a recommendation was made for a salary increase as well as an increase in dependency allowances.

With effect from 1 March 1999, the Commissioner-General approved a revised salary scale and dependency allowance for Area staff members in the Lebanon Field. On 11 March 1999, the Commissioner-General advised all Area staff members in the Lebanon Field of the retrospective salary increases, explaining that, because of the large deficit in the current budget and ongoing austerity measures, Area staff salaries would be increased by varying percentages.

On 16 March 1999, the Chairman of the Area Staff Union (ASU) in Lebanon wrote to the Director of Administration and Human Resources, Gaza, (DAHR) on behalf of Area staff members, expressing dissatisfaction with the recently revised

salary scale. The Acting Director of Administration and Human Resources, Gaza, (A/DAHR) responded on 17 March 1999, explaining that the Agency had attempted to have a salary scale that compared favourably to that of the comparator, subject to financial means.

Following further correspondence on the matter, on 1 November 1999, the Agency met with the Inter Staff Union Conference (ISUC) at UNRWA Headquarters, Amman, to discuss the possible amendment of the Agency's Area Staff Pay Policy.

On 21 February 2000, the Applicant and seven colleagues wrote to the Director of UNRWA Affairs, Lebanon, seeking to appeal against "the current pay policy and results of the last salary surveys which should have been the subject of discussion and amendment during that meeting", and requesting his reply on the adoption of the "Fleming Principle" and applying the pay policy and salary surveys carried out at sister organizations in the Field. In his response of 24 February 2000, the Deputy Director of UNRWA Affairs, Lebanon, stated that the question of pay policy, salary surveys and "the Fleming Principle" was not a matter that could be usefully discussed at Field level and suggested that they request the chairman and executive council of the ASU to raise these matters with the ISUC.

On 1 March 2000, the Applicant and his colleagues submitted an appeal to the Joint Appeals Board (JAB) against the staff salary survey results and pay policy implemented by UNRWA.

Following an investigation in September-October 2000 of the conditions of service for the Agency's Area staff in Lebanon, the Commissioner-General informed all Area staff that the Lebanon Field Area staff salaries would be increased by varying percentages on grade and step, effective 1 October 2000.

The JAB submitted its report on 22 February 2001. It concluded that the appeal did not invoke the competence of the Board as the decision appealed from did not constitute any non-observance of the Appellant's letter of appointment within the meaning of Area staff regulation 11.1(A). The Board therefore unanimously recommended that the appeal was not receivable. On 31 March 2001, the Commissioner-General transmitted a copy of the report to the Applicant and advised him that he agreed with the Board's determination that it was not competent to consider the case, and that, accordingly, he dismissed his appeal on that basis.

On 14 February 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The case is receivable.

2. The Agency's decision to unilaterally change the pay policy in 1990, without the consent of the ISUC, violated his rights.

Whereas the Respondent's principal contentions are:

1. The Applicant has failed to show any basis upon which the JAB, or indeed the Tribunal, should have considered his list of pleas. His Application should be dismissed for lack of jurisdiction.

2. The Applicant filed his Application with the Tribunal on 29 January 2002, not within ninety days, but some nine to ten months later. Thus, the Application is not receivable.

3. The Applicant has not asserted, let alone produced evidence, that the Respondent acted with improper motives in respect of the allocation of funds.

The Tribunal, having deliberated from 24 October to 17 November 2003, now pronounces the following Judgement:

I. Since the Applicant brings these proceedings as a staff member of the Agency, his right of access to its internal justice system and to this Tribunal is, inter alia, governed by Area staff regulation 11.1(A) and by the Statute of the Administrative Tribunal.

Under Area staff regulation 11.1(A) the Respondent was required to establish a JAB with staff participation *"to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her* ***terms of appointment, including all pertinent regulations and rules or against disciplinary action****"*.

The Administrative Tribunal is, under article 1 of its Statute, "competent to hear and pass judgement upon applications alleging non-observance of contracts of staff members" or "terms of appointment of such staff members". The said article defines "contracts" and "terms of appointment" to include all pertinent regulations and rules in force at the time of the alleged non-observance. Article 3 of the Statute provides that in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

II. In light of the provisions outlined above, it can be seen that, in order for the JAB or the Tribunal to enjoy jurisdiction in any proceedings before it, the Applicant or

staff member seeking recourse must seek to establish a breach of the terms of his appointment or the denial of some right thereunder or the breach of some regulation or rule affecting him as a staff member or the breach of a right by reason of disciplinary action taken against him. Unlike a Staff Association or a Staff Union, neither a JAB nor the Tribunal is a vehicle available to a staff member to be used to lobby management or to seek to persuade management to effect what the staff member would perceive to be improvements in his working conditions or the terms of his employment, unless that staff member seeks to establish that the matter of which he complains arises from the non-observance of the terms of his appointment or that it arises from the infringement or denial of some employment right. Both the JAB and the Tribunal are parts of the justice system whose primary objective is to right employment wrongs and to provide remedies to staff members who establish that they have been wronged in relation to a condition of employment or been denied an employment right.

III. In these proceedings, in essence, the Applicant seeks to challenge the provisions of a revised salary scale implemented for staff members in Lebanon with effect from 1 March 1999 and he seeks what are essentially orders from the Tribunal to direct the management of the Agency to replace that policy with a pay policy as adopted by the United Nations Development Programme (UNDP) and to implement various measures which he asserts or believes would be beneficial to the Agency as a whole and to himself and other staff members in particular. These measures include an order directing management of the Agency to implement an interim salary increase to be paid until other "reforms" proposed by him have been implemented. Many of those other proposed "reforms" are of a drastic and far-reaching nature and include, for example, the Applicant's proposal that the UNRWA donor countries establish and finance a governing body for the Agency, which would monitor and judge the acts of the Administration and the management of the Agency.

It must be now noted that the Applicant fails to advance any cogent argument or to seek to establish that the matters of which he complains have breached any rights enjoyed by him as a staff member or that arise from the non-observance of the terms of his appointment. He further fails to identify any rule or regulation pertaining to his appointment which he claims to have been breached or infringed. In the proceedings before the JAB, the Respondent had contended that, in the absence of such submissions, the JAB had no jurisdiction to embark upon the Applicant's appeal thereto. The Respondent had argued that what was essentially a lobbying exercise or an exercise which merely sought an improvement in the Applicant's and his fellow

staff members' conditions in relation to matters such as those complained of in the Appeal were matters appropriate for representations by the Area Staff Associations to Management rather than matters for consideration by the JAB. These submissions are again made by the Respondent in relation to the Applicant's proceedings before this Tribunal. The Respondent observes that the Applicant has failed to identify any alleged non-observance of what he alleges to be the terms of his appointment or to identify any rule or regulation allegedly breached. The JAB rejected the Applicant's appeal on the grounds that it lacked jurisdiction because the appeal was not made against an administrative decision "*alleging non-observance of [the Applicant's] terms of appointment including all pertinent regulations and rules*".

The Applicant has still failed to confront these submissions head on by seeking to allege or identify such a breach. Instead of seeking to establish such non-observance, he seeks to establish jurisdiction by a submission that, whilst

> "*it is true that representatives of the Area Staff Associations normally address these issues in their discussions with senior management; however, they do that on behalf of staff which means that if an individual staff member ... has got concrete comments against the Administrative decisions reached and conveyed to the Associations on a subject that would affect staff in general and since, I, in particular [am] one of the staff; this harm would lead to subsequently giving me the right to appeal against such ... decisions*".

The Tribunal is uncertain as to what this submission is intended to mean. It suggests that the Applicant claims that as a staff member whose conditions of service are governed by matters which had been discussed between the appropriate Area Staff Association and Management, since he claims to have concrete comments to make relating to management policy which has been so discussed, he has a right of recourse to the JAB to express his views on that policy itself and on the manner in which it is being implemented. The Tribunal is satisfied that any such submission is wholly misconceived and must be rejected. The Tribunal repeats that some non-observance or breach of a right relating to the terms of one's employment must be identified in order to found jurisdiction and no such breach has been alleged or identified in this case.

IV. Neither the JAB nor the Tribunal has any function in what are essentially the Applicant's attempts to secure a management role or to shape policy. Neither the JAB nor the Tribunal constitutes a lobbying body and neither has any role as management consultant or management advisor. In further support of his contention in relation to jurisdiction, the Applicant now further seeks to invoke Judgement No. 901, *Abu Salem*

(1998) arguing that it is somehow analogous to the instant case and that it supports the general proposition already referred to. The Tribunal finds no such support from *Abu Salem*. In that case the Applicant had argued that the Agency was in breach of its own obligations to seek to pay its staff rates comparable to the rates paid by its comparator. It had such a mandatory obligation, subject to having sufficient available funds. The Applicant Abu Salem had claimed that the Agency was in breach of its obligations to him (and to others) in failing to honour said policy. Thus, he alleged he was suffering a breach of one of his employment conditions and a breach of one of his terms of employment. His claim was admissible in so far as it related to him, although rejected as a class action. In the event, he failed to establish a breach of the policy and the claim was rejected on its merits. No comparable allegation has been made in these proceedings nor has any claim of breach of any identifiable right been made. In these circumstances the Tribunal is satisfied that neither the JAB nor the Tribunal has any jurisdiction in relation to these proceedings.

V. Accordingly, the claim is rejected in its entirety on jurisdictional grounds.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Spyridon **Flogaitis**
Member

Jacqueline R. **Scott**
Member

New York, 17 November 2003

Maritza **Struyvenberg**
Executive Secretary